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LAVON WILLIAMSON

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAVON WILLIAMSON, a married
person,

Plaintiff,

v.

Life Insurance Company of North
America, a foreign corporation,

Defendant.

Case No.: 2:10-cv-00499-KJD-RJJ

**PLAINTIFF'S SEPARATE
STATEMENT OF FACTS IN
SUPPORT OF HIS RESPONSE TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Williamson alleges the following supplemental facts in support of his Response to Defendant's Motion for Summary Judgment:

1. Williamson's contract with First command specifically indicates that
Williamson's status "*shall not be that of an employee or full-time life*

1 *insurance salesperson under the terms of any federal, state, or local law.”*

2 Exhibit 1 at ¶4(b).

3 2. Williamson was an independent contractor, not an employee. (Dkt. 32, p. 3, ¶4).

4 First Command does not pay premiums for independent contractors. (Dkt. 32,
5 p. 3, ¶3).

6 3. Williams elected to be covered under the Life Insurance Company of North
7 America (“LINA”) Policy on January 1, 2008. (Dkt. 32-1, p. 40).

8 4. Enrollment in the LINA policy is voluntary for all employees and for all
9 independent contractors. (Declaration of Lavon Williamson, Exhibit 2, ¶7, Michael
10 Neveu, Responses to Deposition Notice, Exhibit 3, ¶2.)

11 5. Lavon Williamson paid for 100% of the cost of his LINA disability policy
12 which was deducted from his pay post tax. (Dkt.32-1, p.42, see also Dkt. 32, p. 3, ¶3-4,
13 and Michael Neveu, Responses to Deposition Notice, Exhibit 3, ¶6).

14 6. The number of enrollees in each of the policies offered by the plan varies
15 with the policy. (Dkt. 32-2, *see, e.g.*, 3, 6, 9); *see also* First Command Bill Summary for
16 month of January 2010, attached as Exhibit 4.

17 7. First Command received no consideration for administering the Policy.
18 (Exhibit 3 at ¶7)

19 8. Employees pay the premiums by authorizing a payroll deduction. First
20 Command then transferred the premiums to LINA (Dkt. 32-1 [Exhibit A, LINA Policy] at
21 17; *see also* Exhibit 3 at ¶6).

22 9. The only direct mention of First Command is on the policy cover as “Policy
23 Holder.” (Dkt. 32-1 [Exhibit A – LINA Policy at 5). First Command only agreed to be the
24 Plan Administrator and Fiduciary in the event that ERISA applies as part of the
25 application process. (Application for Group Insurance, Exhibit 5, p.2, ¶5).

26 10. The same document appoints LINA as Claim Fiduciary with a broad scope
27 of duties (Exhibit 5, p.3)

Within the scope of this appointment, Claim Fiduciary shall be responsible for adjudicating claims for benefits under the Plan, and for deciding any appeals of adverse claim determinations. Claim Fiduciary shall have the authority, in its discretion, to interpret the terms of the Plan, including the Policies; to decide questions of eligibility for coverage or benefits under the Plan; and to make any related findings of fact. All decisions made by such Claim Fiduciary shall be final and binding on Participants and Beneficiaries of the Plan to the full extent permitted by law. Plan Administrator shall include the foregoing in Summary Plan Descriptions furnished to Participants. Claim Fiduciary shall provide Plan Administrator with a form of Summary Plan Description, based on its standard Certificates of Insurance, which contains in substance the foregoing, in addition to a summary of the terms of the Policies. Plan Administrator is solely responsible for assuring that any form of Summary Plan Description which differs from the wording of the Summary Plan Description provided by Claim Fiduciary is consistent with the terms of the applicable Plan documents including the Policies. Plan Administrator shall provide Claim Fiduciary with copies of its Summary Plan Description for use of the Claim Fiduciary in discharging its duties as such. Plan Administrator hereby authorizes the issuance of appropriate amendments to any Policies to reflect this appointment and the authority and responsibility granted to the Claim Fiduciary.

11. LINA was fully responsible for determining whether benefits were paid under the policy. (Dkt. 32-1 p. 31.)

12. First Command did not endorse the Policy. (Exhibit 3, ¶4).

13. LINA had the sole ability to make changes in the Policy. (Dkt.32-1, p.27).

Policy Changes

No change in the Policy will be valid until approved by an executive officer of the Insurance Company. This approval must be endorsed on, or attached to, the Policy. No agent may change the Policy or waive any of its provisions.

14. LINA required that any brochures or materials referencing the insurance would be reviewed by LINA prior to publication. (Exhibit 5, p.1)

15. In the claim file, LINA states that Williamson's claim was a "NON ERISA claim," (October 26, 2009 claim file note, attached as Exhibit 6.)

16. First Command transmitted information required by LINA to determine Williamson's claim. (Dkt. 32-1, p. 38, 40).

17. LINA made the decision to deny Williamson's claim. (Cigna Denial Letter, Exhibit 7).

18. Field Agents covered earnings are defined differently than Employee covered earnings. (Dkt. 32-1, p. 14, *see also* p. 8, 11).

19. The Policy defines covered earnings of "Employees of Field Agents." (Dkt. 32-1, p. 14).

20. Employees are given a 50% Core Gross Disability Benefit, and 60% Optional Benefit, whereas Field Agents are given the lesser of 60% of covered earnings or the Maximum Disability Benefit of \$10,000. (Dkt. 32-1, p. 8, 11, 14).

1 21. The Initial Premium rates for Field Agents is \$.77 per \$100 of Covered
2 Payroll which is more than four times the \$.177 per \$100 charged for employee core
3 benefit premiums. The employee optional benefit premium is a mere \$.08 per \$100. (Dkt.
4 32-1, p. 1410, 13, 16).

5 22. Class 2 participants' contributions to the Policy are 100% paid by the
6 participant. (Employer Tax Information, Exhibit 8 ¶2).

7 23. First Command provided information to LINA to insure proper
8 administration. (Exhibit 5, ¶4).

9 Dated this 14th day of November 2011.

10
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